

FCC MAIL SECTION

Federal Communications Commission

DA 97-103

JAN 27 11 07 AM '97

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

Amendment of Section 73.202(b))

Table of Allotments,)

FM Broadcast Stations.)

(Saint Paul, Arkansas)¹)

MM Docket No. 97-34

RM-8938

NOTICE OF PROPOSED RULE MAKING

Adopted: January 17, 1997

Released: January 24, 1997

Comment Date: March 17, 1997

Reply Comment Date: April 1, 1997

By the Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed on behalf of Saint Paul Broadcasting ("petitioner") requesting the allotment of FM Channel 287A to Saint Paul, Arkansas, as that locality's first local aural transmission service. Petitioner stated a commitment to apply for Channel 287A if it is allotted to Saint Paul, Arkansas, as requested.

2. In support of the proposal petitioner states that Saint Paul has a population of 200 persons according to city hall sources.² According to petitioner, Saint Paul is incorporated and contains some community indicia such as a mayor, city councilmen, city recorder, and treasurer. Petitioner also urges that Saint Paul has its own school, water, sewer and waste district, and therefore is a community for allotment purposes, citing *Mighty-Mac Broadcasting Company* (*Mighty-Mac*), 101 F.C.C. 2d 303, 58 RR 2d 599 (Rev. Bd. 1985) (a community with a population of 750 persons and a local post of the state police was held to be a "community" within the context of Section 307(b) of the Communications Act).

3. Initially, petitioner's reliance on *Mighty-Mac, supra*, is misplaced in the allotment context. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission allot channels "... among the several States and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or listed in the U.S. Census, that is sufficient to satisfy its status.

¹Although this locality is listed as "St. Paul" in the 1995 Rand McNally Commercial Atlas and Marketing Guide, and is reflected as such on available maps, it is recorded as "Saint Paul" by the U.S. Census Bureau.

²According to the U.S. Census Bureau, Saint Paul township has a population of 88. Therefore, since petitioner reports the locality contains a population of 200 persons, according to city hall sources, we request documented information to substantiate its claim.

Absent such recognizable community factors, the proponent of a channel allotment must demonstrate the place to be a geographically identifiable population grouping. *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 101 (1982). See also *Oak Grove, Florida*, 5 FCC Rcd 3774 (1990); *Hannibal, Ohio*, 5 FCC Rcd 3315 (1990); and *Statenville, Georgia*, 5 FCC Rcd 2685 (1990). In questionable instances, the proponent may show that the residents of the locality are commonly regarded as a distinct group. This can be accomplished by the testimony of local residents or by objective or subjective evidence indicating the existence of a community. *Beacon Broadcasting*, 2 FCC Rcd 3469 (1987), *aff'd*, 2 FCC Rcd 7562 (1987). While recognizing that Saint Paul is listed in the 1990 Census with a population of 88, and has its own post office and zip code, as well as being incorporated, we may ascertain that a population grouping as meager as Saint Paul does not constitute a community for allotment purposes where the community may be devoid of the customary considerations associated with determining community status such as a library, shopping centers, churches, a newspaper and civic organizations. See e.g., *Searles Valley, California*, 3 FCC Rcd 5221 (1988); see also *Naples, Florida*, 41 RR 2d 1549 (1977). Other examples of objective indications of community status include, *inter alia*, the existence of political, social, economic, commercial, or cultural organizations and services in the community. See *Kenansville, Florida*, 5 FCC Rcd 2663 (Policy & Rules Div. 1990), *aff'd* 10 FCC Rcd 9831 (1995). Therefore, based upon the petitioner's initial presentation, we cannot determine Saint Paul's community status for allotment purposes under the *Beacon Broadcasting* or *Kenansville* test. Therefore, petitioner is requested to provide additional documented information regarding the attributes of Saint Paul, Arkansas, consistent with the above guidelines. Failure to provide the requested information will result in a denial of the proposal.

4. We believe the petitioner's proposal to provide Saint Paul, Arkansas, with its first local aural transmission service, should it ultimately be deemed a community for allotment purposes, warrants additional consideration. Therefore, we invite comments on the proposal, as indicated *infra*.

5. A staff analysis of the proposal indicates that Channel 287A can be allotted to Saint Paul, Arkansas, consistent with the requirements of Section 73.207(b)(1) of the Commission's Rules provided the transmitter therefor is located at least 13.4 kilometers (8.3 miles) east thereof, utilizing coordinates 35-48-14 and 93-37-00.³

6. In view of the above, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with regard to Saint Paul, Arkansas, as follows:

³The site restriction is required to avoid a short spacing to recently allotted Channel 287C3, Mena, Arkansas, at coordinates 34-38-46 and 94-16-53. See MM Docket No. 96-135, DA 96-1812, released November 8, 1996. The site restriction also negates a short spacing to the licensed site of Station KMCK(FM), Channel 289C1, Siloam Springs, Arkansas, at coordinates 36-11-07 and 94-17-49.

<u>City</u>	<u>Present</u>	<u>Channel No.</u> <u>Proposed</u>
Saint Paul, Arkansas	--	287A

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before March 17, 1997, and reply comments on or before April 1, 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Henry E. Crawford, Esq.
Law Offices of Henry E. Crawford
1150 Connecticut Avenue, N.W.
Suite 900
Washington, D.C. 20036.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service

requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIXMM Docket No. 97-34
RM-8938

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a

certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239), at its headquarters, 1919 M Street, N.W., Washington, D.C.